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CHARLES ELM

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1929.

No. 20.

SAFE DEPOSIT & TRUST COMPANY OF BALTIMORE, MARYLAND,

Appellant,

against

THE COMMONWEALTH OF VIRGINIA,

Appellee.

ON APPEAL FROM THE SPECIAL COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF OF RUSSELL L. BRADFORD AS AMICUS CURIAE AND ON BEHALF OF THE CITY BANK FARMERS TRUST COMPANY, OF NEW YORK, AS TRUSTEE.

RUSSELL L. BRADFORD,
Amicus Curiae.

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No. 20

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THE COMMONWEALTH OF VIRGINIA,
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ON APPEAL FROM THE SPECIAL COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF OF AMICUS CURIAE.

This brief by permission of the Court, and with the consent of counsel for the respective parties, is filed by the undersigned as *amicus curiae,* and on behalf of the City Bank Farmers Trust Company of New York as Trustee of trusts made by residents of states other than the State of New York, the statutes of which, and the administrative rulings in connection therewith, are not wholly dissimilar from the Virginia statute and the decision of the Virginia Court in the case in suit.

This case presents the question of whether intangible personal property physically located in the State of Maryland and standing in the name of, and owned by, a Baltimore, Maryland, trust company as trustee, is subject to the *ad valorem* personal property taxes of the State of Virginia if the *cestuis* be residents of Virginia.

The relevant facts are set out in the brief of counsel for appellants as well as in the opinion of the Special Court of Appeals of Virginia (R., 21). The argument of this brief in support of the appellant's contentions that the trust funds in suit are not subject to the Virginia *ad valorem* personal property tax will be addressed to the following points in the following order:

I. An *ad valorem* personal property tax may not be imposed upon intangibles held outside of the state by a non-resident trustee upon an irrevocable trust.

II. The *cestuis* in the case in suit are not the owners of the intangibles composing the *corpus* of the trust nor of the trust *res*.

III. *Brooke* v. *City of Norfolk* should be controlling. There is no more property in the State of Virginia in this case than there was in that case.

POINT I.

An ad valorem personal property tax may not be imposed upon intangibles held outside of the state by a non-resident trustee upon an irrevocable trust.

Intangibles may be subjected to an *ad valorem* personal property tax at the domicile of the owner under the rule of *mobilia sequuntur personam* (*Kirtland* v. *Hotchkiss*, 100 U. S. 491, 25 L. Ed. 558 (1879); *Fidelity etc. Co.* v. *Louisville*, 245 U. S. 54, 62 L. Ed. 145 (1917); *Guthrie* v. *Pittsburgh etc. Ry. Co.*, 158 Pa. St. 433 (1893)). They also may be taxed by the state of the owner for inheritance or death duty purposes. (*Frick* v. *Pennsylvania*, 268 U. S. 473, 79 L. Ed. 1058 (1925); *Blodgett* v. *Silberman*, 277 U. S. 1, 72 L. Ed. 749 (1928); see also *Bullen* v. *Wisconsin*, 240 U. S. 625, 60 L. Ed. 831 (1916)). This is true whether the intangibles be with the owner or by his voluntary act have a separate *situs* (*ibid*).

Intangibles may be subject to tax where they are physically located if they have by act of the owner obtained a separate *situs*. The rule that "movables follow the owner" yields to the fact of presence and location. "The legal fiction, expressed in the maxim *mobilia sequuntur personam*, yields to the fact of actual *control* elsewhere." (*Liverpool etc. Ins. Co.* v. *Orleans Assessors*, 221 U. S. 346 at p. 354, 55 L. Ed. 762 (1911)). This proposition has been upheld by this Court in a long line of decisions commencing with *New Orleans* v. *Stempel*, 175 U. S. 309, 44 L. Ed. 174 (1899), continuing with *Bristol* v. *Washington Co.*, 177 U. S. 133, 44 L. Ed. 701 (1900); *State Board of Assessors* v. *Comptoir National d'Escompte*, 191 U. S. 388, 48 L. Ed. 232 (1903); *Metropolitan Life Ins. Co.* v. *New Orleans*, 205 U. S. 395, 51 L. Ed. 853 (1907), and through to *Liverpool etc. Ins. Co.* v. *Orleans Assessors*, 221 U. S. 346, 55 L. Ed. 762 (1911).

The above cases present a variety of circumstances in which this Court has had for decision the taxable *situs* of intangibles which were located elsewhere than at the domicile of the owner. It may be interesting to note, though superfluous to point out, that in each of these cases the intangibles had obtained a separate *situs* of their own by and through the voluntary act or conduct of the owner.

The doctrine as laid down in the above cases in respect of *ad valorem* personal property taxes is true also of inheritance taxes. (*Blackstone* v. *Miller*, 188 U. S. 189, 47 L. Ed. 439 (1903); *Wheeler* v. *Sohmer*, 233 U. S. 434, 58 L. Ed. 1030 (1914).

Tangible personalty, like real estate, may be subjected to tax only where it is located. The former doctrine that "all movables follow the owner" for purposes of taxation has thus completely yielded to the fact of presence and is no longer applicable in respect of tangible personalty either with regard to *ad valorem* personal property taxes or death duties. (*Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194, 50 L. Ed. 150 (1905)—as

to property taxes—and *Frick* v. *Pennsylvania*, 268 U. S. 473, 79 L. Ed. 1058 (1925) as to death duties).

The *ratio decidendi* of these cases is that the taxing state must have jurisdiction of the taxable subject. The taxable subject, if it be intangibles, must be within the jurisdiction of the state, either by virtue of actual presence or if incorporeal such as credits on open account then by reason of "actual control", or by virtue of the application of the maxim *mobilia sequuntur personam*. The owner may not be taxed upon property owned by him unless the property taxed is within the taxing jurisdiction either actually or by some accepted fiction of law. (See *Union Refrigerator Co.* v. *Kentucky*, supra, and cases above cited.)

If the above propositions of law are applied to the facts in this suit they bring us to the following conclusions:

(1) The trust *res*, or the securities comprising the trust *corpus*, are not physically within the State of Virginia and may not be taxed by virtue of the actuality of *situs* or the control of the State over them.

(2) The doctrine *mobilia sequuntur personam* may not be applied to the trust *res* unless (a) the *cestuis* in the case in suit are in fact and in law the owners of the full trust *res* and (b) the trust *res* is without the state by their voluntary discretionary act. (*Brooke* v. *City of Norfolk*, 277 U. S. 27 (1928)—in respect of property taxes; *Wachovia Bank & Trust Co.* v. *Doughton*, 272 U. S. 567, 575, 71 L. Ed. 413 (1926)—in respect of inheritance taxes or death duties).

In the *Wachovia* case this Court said (at p. 575):

> "We think the assets of the trust estate established by the Will of Haynes had no *situs*, actual or constructive, in North Carolina. * * * A state may not subject to taxation things wholly beyond her jurisdiction or control. *Frick* v. *Pennsylvania*, 268 U. S. 473."

The property composing the trust fund or the trust *res,* even assuming—an assumption which hereafter will be proven to the contrary—the *cestuis* were the owners, could not be brought into the State of Virginia by any act of the *cestuis.* The corpus of the trust is wholly beyond their control, is not in their possession, and they may not bring the same into the State of Virginia even if they wanted to. In *Brooke* v. *City of Norfolk,* supra, at p. 29, this Court said:

> "But here the property is not within the State, does not belong to the petitioner and is not within her possession or control."

Similarly it may be said in respect of the Kellam trust in suit that the property is not within the State, does not belong to the *cestuis* and is not within their possession or control. Yet in the *Brooke* case Mrs. Brooke could have disposed of her life interest by assignment or by sale at a reasonable proportion of the value of her life interest. In addition she had the actual enjoyment of the property in that she received the full usufruct. In the case in suit until the *cestuis* become twenty-five years of age they not only may have no enjoyment of the property, but it is doubtful whether they could dispose of the same by sale at any sum reasonably commensurate with the value attributed to the property for the purposes of the Virginia tax, if, indeed, at any price.

The tax imposed under Section 2307 of the Virginia Code as amended was upon the intangibles composing the trust *corpus.* The intangibles were not in Virginia. That fact eliminates one basis of assessment. Were the intangibles assumed to be in Virginia that is, constructively there, by virtue of the presence in Virginia of the *cestui* under the doctrine *mobilia sequuntur personam?* That brings us to a discussion of the second point or inquiry.

POINT II.

The cestuis in the case in suit are not the owners of the intangibles composing the corpus of the trust nor of the trust res.

We have seen that the intangibles were not actually in Virginia nor under the "actual control" of that State, therefore to be taxable they must have been constructively there by reason of the domicile of the legal owner. Was there a Virginia owner?

The Special Court of Appeals of Virginia (145 S. E. at p. 330) took the position that unless the two sons, that is, the *cestuis,* and the personal representatives of the grantor of the trust, are the owners of the trust fund, the fund is without ownership. It therefore concludes, a *non sequitur,* that "no non-residents are owners or have any interest in the *corpus* of the trust fund in Baltimore; that the present, and, if essential, the ultimate owners of the property, are residents of the State of Virginia; that the assessment in this case does not require any persons to pay a tax upon intangible personal property to which they are strangers." It is obvious, or should be, that the *cestuis* are not the full owners of the trust fund. It is equally obvious that the mere possibility of reverter in the estate of the grantor does not constitute a full ownership. Nor, as the brief of counsel for the appellant points out, does the alleged ownership in the *cestuis* and the Kellam estate taken separately or together constitute the totality of ownership. They "fall short of being commensurate with the entire interest that has been taxed." It is quite conceivable that either of the two children could, prior to reaching the age of twenty-five years, die leaving issue living outside of the State of Virginia. The unborn issue may not be ignored in considering the totality of ownership.

But neither the *cestuis* nor the Kellam estate is the legal owner of the property sought to be subjected to tax. There was a valid suspension of the power of alienation

and during that period the full dominion over, legal title to, and ownership of the property is in the trustee. It and it alone could be taxed upon the property, and could be taxed only by the taxing jurisdictions having control over it or the property it owned. If the trustee places and keeps the securities outside of the State of Maryland, they nevertheless would be subject to the Maryland personal property tax because of the ownership of the trustee, under the doctrine of *Kirtland* v. *Hotchkiss*, 100 U. S. 491. (See also *Guthrie* v. *Pittsburgh etc. Ry. Co.*, 158 Pa. St. 433).

It is true that while there are certain equitable rights appertaining to the *cestuis*, nevertheless they are not the legal owners of the property and may never be. Similarly this is true of the estate of L. J. Kellam, the deceased grantor. In *Maguire* v. *Trefry*, 253 U. S. 12, this Court in upholding the right of the State of Massachusetts to impose a tax upon income received by a resident thereof from property held in trust without the State of Massachusetts, said at p. 16:—

> "It is true that the legal title of the property is held by the trustee in Pennsylvania. But it is so held for the benefit of the beneficiary of the trust, and such beneficiary has an equitable right, title and interest distinct from its legal ownership. 'The legal owner holds the direct and absolute dominion over the property in the view of the law; but the income, profits or benefits thereof in his hands, belong wholly, or in part, to others.' 2 Story's Eq. 11th Ed. Sec. 964. It is this property right belonging to the beneficiary, realized in the shape of income, which is the subject matter of the tax under the statute of Massachusetts."

It was there recognized that the legal title and ownership of the property was in Pennsylvania. Also in that case, as the Supreme Judicial Court of Massachusetts said, and which was quoted with approval at p. 14 by this Court, the income tax of Massachusetts affected

> "only the income after it has been paid by the trustee to the beneficiary."

It was therefore a tax upon the income after it had been made available to the resident of Massachusetts and thus was capable of being brought into the State of Massachusetts by the voluntary act of the resident. The Massachusetts resident then became the owner of the income.

The Massachusetts Court also said, quoting from *Bates* v. *Boston*, 5 Cush. 93, at p. 99:—

> "The assessment does not touch the fund, or control it; nor does it interfere with the trustee in the exercise of his proper duties; nor call him, nor hold him, to any accountability."

In *Guthrie* v. *Pittsburgh etc. Ry. Co.*, 158 Pa. St. 433 the Supreme Court of Pennsylvania upheld a personal property tax upon intangibles owned by a Pennsylvania testamentary trustee under a will probated in the District of Columbia, and which intangibles the trustee had allowed to remain in the District of Columbia. The tax was upheld upon the ground that the trustee was the owner of the property, and the intangibles thus had a taxable *situs* at the domicile of the owner. The Court said (at p. 438):—

> "It certainly seems well settled that the *situs* of such property for the purpose of taxation is in that state where the trustee *in whom is vested the legal title and ownership is domiciled.*" (Italics ours).

In the case in suit at the time of the assessment the income, profits and benefits of the trust fund were not and could not be enjoyed by the *cestuis* or any other person living in the State of Virginia. The property was legally and wholly owned for the time being by the nonresident Baltimore trustee. Held, it is true for the ultimate benefit of as yet unascertained remaindermen, or for unborn issue who may or may not ever be residents

of the State of Virginia, but nevertheless owned by the trustee. All the income, profits or benefits of the trust fund were to be held and retained by the trustee to be ultimately distributed in accordance with the provisions of the trust instrument. Every element of ownership inhered in the trustee in Baltimore, subject to its duty to turn over the principal and the income to those designated to be the ultimate owners of the trust *res* when they shall have been ascertained or become known in accordance with the terms of the trust agreement.

The trustee was liable to taxation in the State of Maryland and the record shows that it paid a tax to the State of Maryland as the owner of property located therein. The trustee alone was subject to the payment of the Federal income taxes upon the income from, or upon any realized accretions to, the principal of the trust fund. So far as the status of the trust *res* was concerned during the period covered by the taxes imposed in suit, no income nor benefits of the trust fund belonged to or could have been enjoyed by any person then definitely known as the ultimate owner of the property living in Virginia.

It is submitted there was no ownership at all of the intangibles composing the trust property, nor of the trust *res,* by anyone within the jurisdicition of the State of Virginia. It is submitted *a fortiori,* even assuming ownership—which is denied—in the *cestuis* and in the estate of the grantor, nevertheless that ownership falls short of being the ownership of the total, which the State of Virginia under the provisions of Section 2307 of the Code as amended has sought to tax.

These cestuis may not will away this property as the life beneficiary and donee of the power in the property might have done and did in the case of *Wachovia Bank & Trust Co.* v. *Doughton, supra.* These *cestuis* may not dispose of the property nor even of such interest as they have, if any, with the expectation of realizing any substantial sum as the beneficiary in *Brooke* v. *City of Nor-*

folk, supra, may have done in respect of her life estate. The right or claim that the *cestuis* have is that only of a conditional interest (call it a vested interest subject to being divested or not) and this interest is of so uncertain and attenuated a nature as to repel a fictional hypothesis of total and complete ownership.

But even assuming there was some property interest in residents of Virginia, was it the ownership sought to be taxed by the Virginia statute, and was it an ownership of the trust *res* as an entity, or the ownership of the intangibles composing the trust fund? Clearly not the latter. But it is the intangibles or the trust *corpus* that is subjected to the tax, not the value, if there be any, of the inchoate expectancy, or of the contingent interest of the Virginia *cestuis.* It fairly may be said there was no more ownership of the property of this trust fund, if as much, by Virginia residents than there was ownership by a Virginia resident of the property in the case of *Brooke* v. *City of Norfolk.*

POINT III.

Brooke v. City of Norfolk should be controlling. There is no more property in the State of Virginia in this case than there was in that case.

There is no real and substantial difference between the case in suit and the case of *Brooke* v. *City of Norfolk.* The point of law is practically identical. The cases differ only in that in the *Brooke* case the actual items of property comprising the trust *corpus* were never in the State of Virginia while in the trust here in suit the items originally composing the *corpus* of the trust fund (they may have been since changed) were at one time in the State of Virginia.

We take it for granted that the *Brooke* case may not be differentiated from the case in suit merely upon the ground that the origin of the trust property in the case in suit was in the taxing state, whereas in the *Brooke* case the property originated in the state wherein the securities were held by the trustee. Quite obviously this slight and inconsequential variation in the facts does not differentiate the question of law presented nor the point decided in the *Brooke* case. The mere fact that a man removes property from one state to another, even though it be done for the purpose of minimizing taxes, does not render the property subject to tax at its former location. If it be tangible property that he has sent out of the state the law is definite that the state of his domicile may not impose a tax upon it or him because of his ownership. (*Union Refrigerator Transit Co.* v. *Kentucky, supra,* and *cf. Buck* v. *Beach,* 206 U. S. 392, 51 L. Ed. 1106) This is likewise true of intangibles if he cease to be the owner thereof. During the years of the tax in suit the intangibles were not in the State of Virginia regardless of where they may have been before. No jurisdiction exists to tax by reason solely of the former habitat of the securities. If the ownership be retained, then the tax may not be avoided by removing the intangibles. But if the ownership be changed and the intangibles be without the state, the mere fact that they formerly had been within the state does not render them amenable to the taxing law.

The two cases differ superficially also in that in the *Brooke* case the beneficiary had only a life interest and would never be entitled to any part of the corpus of the trust, though she did have a right of sale (we have assumed the *Brooke* trust not to be a spendthrift trust) of the interest owned by her, that is to say, her life estate, whereas in the trust in suit upon the happening of certain contingencies the two sons of the grantor of the trust

now resident in Virginia may become the owners of the *corpus*. On the other hand they could not in any practical commercial sense dispose of that interest. Like the beneficiary in the *Brooke* case they have no testamentary power over the trust property.

In the *Brooke* case this Court said "the property is not within the State * * *". This Court there must have meant either the items or securities composing the *corpus* of the trust fund were not within the state or the actual trust *res* was not within the State. It could not have meant that Mrs. Brooke did not own a property right of some sort, for there was within the state a right in Mrs. Brooke to the income, which capitalized over the period of her life expectancy might have been held to be a credit or a right of property in that such credit or right had its *situs* with her. But this Court necessarily had in mind not that claim or right to the income as and when earned but the actual trust *res* or the trust property, for that is what the statute taxed. If the *corpus* of the trust had been real property located in Maryland Mrs. Brooke would have had the same right to the income, and when it became income would have been liable nevertheless to tax upon it by Virginia. But the real estate *corpus* could not have been taxed. Mrs. Brooke was taxed upon the whole of the *corpus* consisting of intangibles. She did not own the whole. This Court says she owned none of it. Therefore, this Court held the tax upon the trust fund in the *Brooke* case invalid.

In the case in suit, applying the doctrine laid down in the *Brooke* case, neither the trust *res* nor any of the intangibles comprising the trust *corpus* are "within the state" any more than it would have been if it consisted of real property. The children of the grantor in the case in suit have in fact and in law less property and less property rights than Mrs. Brooke had under the trust there in suit. She had a substantially real thing that belonged to her during the whole of the period of her life. But she did not own any of the *corpus* of the trust, which

was the subject of the tax. In the Kellam trust the two children now own nothing of practical or substantial value. They do not even enjoy the income from the property of which they are the alleged owners. They may never be the owners of either the principal or the income. When they do become the actual owners thereof, if ever, they may not be then residents of Virginia. Their interest is a less interest for all practical purposes than that of Mrs. Brooke. They have a mere expectancy to property and not an ownership in property.

That no taxable subject exists in Virginia upon which the tax may fasten as held in the *Brooke* case, is reenforced and fortified by the decision of this Court in *Wachovia Bank & Trust Co.* v. *Doughton*, 272 U. S. 567, 575.

In this case a trust had been created in the State of Massachusetts with a Massachusetts trustee by a resident thereof for the benefit of his daughter who subsequently married and moved to North Carolina. She was the full life beneficiary of the trust fund and received all of the income, profits and benefits of the said trust fund during the period of her life. In addition to that she had a general power of appointment by will over the full *corpus* of the trust. She had a thing of actual value in the trust property. Her life estate was saleable. She could have disposed of the *corpus* by will in any way she saw fit. It is true that under the law of powers obtaining in Massachusetts the appointee takes from the donor and not the donee. Nevertheless, the daughter, Theodosia Taylor, could exercise over that property and enjoy many more of the attributes of ownership than the children in the Kellam trust. This Court held that the State of North Carolina under a statute imposing a transfer inheritance tax upon the exercise of powers of appointment could not reach this property which was situated in Massachusetts, and the Court concludes its opinion in that case at p. 575 with the statement that

> "We think the assets of the trust estate established by the will of Haynes had no *situs,* actual or constructive, in North Carolina."

To what assets does the statement of the Court apply? Not to the power, not to the right of disposition by will of the *corpus* of the trust that was owned by the North Carolina resident, but to the *actual intangible assets* that comprised the *corpus* of the trust. They and they alone were the tax subjects. If they were in the State of North Carolina, either physically or by virtue of the ownership thereof in the donee of the power, then the North Carolina tax properly could have been imposed. If they were without the state and she were not the absolute owner thereof, then the tax was a violation of the Fourteenth Amendment to the Constitution of the United States as this Court held and as it said in closing its opinion in that case:

> "A state may not subject to taxation things wholly beyond her jurisdiction or control." *Frick* v. *Pennsylvania,* 268 U. S. 473.

In the *Brooke* case, in the *Wachovia* case, and in the present case of the *Safe Deposit & Trust Co. of Baltimore,* no accounting may be compelled by or in any court of the taxing state,—in this case the State of Virginia. In none of the three cases has the beneficiary or *cestui* any power of control or right in respect of the management and administration of the trust property. In none of the cases did the title stand in the name of the *cestuis* or the beneficiary. In all of the cases the inevitable *ratio decidendi* is that the actual owner of the property was the trustee in whose name the intangibles stood.

It may be observed also that in each of these cases the retention of the intangibles outside of the territorial jurisdiction of the taxing state was beyond the control or discretion, and even despite the possible wishes, of the

beneficiaries and/or *cestuis*. On the other hand, as heretofore pointed out, in every case running from *New Orleans* v. *Stempel* through *Liverpool Insurance Company*, and including the inheritance tax cases of *Bullen* v. *Wisconsin*, *Frick* v. *Pennsylvania*, and *Blodgett* v. *Silberman*, the tax when imposed because of the *situs* of the intangibles was imposed upon intangibles that had obtained a separate *situs* by the *voluntary* act of the actual owners of the property, or because the taxing state had control of the subject taxed.

We think it may be said, and submit that it lies at the root of the law in respect of the *situs* of intangibles, that if the intangibles be with the owner at his place of domicile they may be taxed only at his place of domocile or by the state having control of the property, as in the case of corporate stocks. If the intangibles by the exercise of the voluntary free will of the owner are placed and kept in a jurisdiction other than that of his domicile, then they may be taxed either at their physical location or at the domicile of the owner or both. (See cases cited above). But even assuming, which is not the fact here, the ownership of the intangibles, they nevertheless may not be taxed at the domicile of the owner if it be beyond the power of the owner to bring them to his domicile or they be beyond the control of the taxing state. They have under such circumstances a *situs* as separate and distinct from his as the *situs* of real property or tangible personal property. It may not be said, as we construe the decisions, that intangibles are and must be held to have a constructive *situs* with the reputed owner if they are not and by his act may not be with him at his domicile.

In view of the decisions that the rule that "movables follow the owner" yields to fact, to convenience, and to justice, and in view of the modern uses of intangible property and the exchange and transfer of the same with the same facility that money may be used, the question

of the *situs* of intangibles for purposes of taxation has not been altogether free from perplexity and at times confusion. The law in respect of real estate has always been settled. In respect of tangible personalty the proper *situs* thereof has now been settled both for property taxes (*Union Refrigerator Transit Co.* v. *Kentucky*) and for inheritance taxes (*Frick* v. *Pennsylvania*). The rule as to intangibles is, we submit, equally definitely settled, though intangibles may be open to double taxation.

The rule as we adduce it from the decisions of this Court is, as we have heretofore stated, that *ad valorem* personal property taxes and inheritance taxes may be imposed by the State of the domicile of the owner if the intangibles be with the owner, and even if the intangibles be separated from the owner, if separated by his act or treatment of them. Intangibles may be taxed where they are employed in business or where they are physically present, regardless of the domicile of the owner if the owner's act or conduct has given to them a *situs* separate from that of his domicile. They also may be taxed regardless of the domicile of the owner by the state having jurisdictional control over the subject taxed. But constitutionally a state may not tax intangibles not employed or located therein, unless that state has control of the subject matter of the tax, or the intangibles are deemed to be within the State by virtue of the presence of the owner who has *voluntarily* placed and kept them without the state.

We therefore respectfully submit that so long as the Safe Deposit and Trust Company of Baltimore acts as trustee and retains and keeps in its possession in Baltimore the intangibles composing the *corpus* of this trust fund under the circumstances and facts of this case, these intangibles are subject to tax only by the State of Maryland. A tax sought to be imposed by any other taxing jurisdiction is in violation of the "due process of law"

clause of the Fourteenth Amendment of the Constitution of the United States.

POINT IV.

The decision of the Special Court of Appeals should be reversed.

Respectfully submitted,

RUSSELL L. BRADFORD,
Amicus Curiae.